



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Michael W. Deeds
Heard, Goggan, Blair & Williams
3555 Timmons, Suite 800
Houston, Texas 77027

OR95-1462

Dear Mr. Deeds:

You previously asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. A copy of the first page of your letter to this office is enclosed for your reference. Your request was assigned ID# 26448.

The Houston Independent School District (the "district"), which you represent, received an open records request for copies of checks issued by taxpayers to pay property taxes. You assert that the requested information is excepted from required public disclosure. You have not, however, cited any authority for withholding this information under the act, despite our specific request that you do so. Nor have you submitted a copy of the request that the district received for this information.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records

decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On August 10, 1994, we asked you to submit your arguments for withholding the requested documents and a copy of the request for information that the district received. To date we have not received your arguments for withholding the information nor a copy of the request letter.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Because you failed to raise and argue any of the act's exceptions, you have waived any protection the discretionary exceptions may have provided this information. See Open Records Decision No. 522 (1989). Furthermore, we know of no law that generally makes confidential copies of checks that were submitted by taxpayers in payment of school property taxes, nor have you cited any such law. In fact, in Open Records Decision No. 98 (1975), this office concluded that a "hot" check submitted to the City of Dallas Tax Assessor-Collector in payment of a tax debt was public information. See also Gov't Code § 552.022(3) (all information in account, voucher, or contract relating to receipt or expenditure of public or other funds by governmental body is public, unless otherwise made confidential by law).

However, consistent with other decisions of this office, we believe that the checking account numbers contained on the requested checks constitute information protected by the common-law right of privacy. See generally *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983) (certain personal financial information protected by common-law privacy).

In the absence of a demonstration that any other requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, the district must release the information. See also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 26448

Enclosure: First page of May 13, 1994 letter